



UNITED STATES SENATE
**REPUBLICAN
POLICY COMMITTEE**

Larry E. Craig, Chairman
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From the Congressional Record

**Senator Gregg: McCain-Edwards-Kennedy
Gives Trial Lawyers Two Bites At the Apple**

Here's what HELP Committee Ranking Member Judd Gregg (R-NH) had to say [as printed in the *Congressional Record* of June 19, 2001] about the expansion of lawsuits provided by the newly introduced McCain-Edwards-Kennedy bill:

. . . The McCain bill creates two opportunities to take a bite at the apple. First, it allows unlimited lawsuits against health plans and employers under state law. Second, it creates an expansive new remedy with very large damages under federal law.

The dual Federal-State scheme under the McCain bill will encourage dual claims and forum shopping. Plaintiff's lawyers will shop around for the forum with the highest limits on damages. And there is nothing in the bill that would prohibit suits based on the same or a similar set of facts from being filed simultaneously or consecutively in both State and Federal court.

This dual Federal-State scheme will raise complicated and costly jurisdictional questions and will ensure that plan benefits and administration will vary from State to State. This will only serve to confuse patients who are already faced with the task of navigating a complex health care system.

This scheme will also impose needless and excessive costs that will discourage employers from sponsoring health plans. It will ultimately increase the ranks of the uninsured.

Federal courts have been routinely hearing cases involving complicated employee benefit cases. The McCain bill would essentially remove all coverage and claims decisions from Federal court and place them under State jurisdiction,

even though States have no experience with ERISA and employer-sponsored benefits.

Federal courts have honed their expertise in resolving complicated employee benefits issues since they were given exclusive jurisdiction over such cases in the Employee Retirement Income and Security Act of 1974 (ERISA). Approximately 10,000 ERISA cases are filed each year in Federal court.

In order to provide high quality and affordable benefits to employees, employers that sponsor health plans across State lines must be able to administer their benefits in a uniform, consistent and equitable manner. The McCain bill will produce multiple and conflicting State laws, regulations and court interpretations, making it difficult for employers to administer their health plans.

Congress' rationale for giving Federal courts exclusive jurisdiction with respect to remedies is as applicable today as it was in 1974. From ERISA's legislative history: "It is evident that the operations of employee benefit plans are increasingly interstate. The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws."

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